

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
VoiceStream PCS I License, L.L.C.)	File Number EB-02-DV-125
)	
Owner of Antenna Structure #1015374)	NAL/Acct. No. 200332800003
Aurora, Colorado)	FRN 0001-5651-34
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 29, 2002

By the District Director, Denver Office, Enforcement Bureau

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that VoiceStream PCS I License, L.L.C., ("VoiceStream"), registered owner of antenna structure #1015374, in Aurora, Colorado, has apparently willfully and repeatedly violated Section 17.4(g) of the Commissions Rules ("Rules")¹ by failing to display the Antenna Structure Registration ("ASR") number on its antenna structure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as Amended ("Act"),² that VoiceStream is apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000).

II. BACKGROUND

2. On May 21, 2002, at 3 p.m., MDT, an agent from the FCC's Denver Office inspected an antenna structure located approximately 0.3 miles northeast of the intersection of Interstate 70 with East Smith Road in Aurora, Colorado. At the time of the inspection, the structure was exhibiting strobe lights and no ASR number was found posted at the site. A subsequent query of the FCC's ASR database revealed that the structure was registered to VoiceStream with the ASR number 1015374. The ASR showed the structure's painting and lighting specifications to be FAA Chapters 4, 8, and 13, which require the structure to have dual lighting, utilizing medium intensity white lights during the day (i.e. strobes) and red lights at night.

¹ 47 C.F.R. §§ 17.23 and 17.50.

² 47 U.S.C. § 503(b).

3. On October 2, 2002, at 12:25 p.m. MDT, the Agent returned to the tower site to verify that the lighting was congruent with the structure's ASR lighting specifications. At the time of this inspection, the antenna structure was properly lit with daytime strobe lighting with a red beacon mounted atop the tower and red sidelights mounted at the mid-level of the structure. However, no ASR number was posted at the site.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

5. Section 17.4(g) of the Rules requires that the ASR number be posted in a conspicuous location so that it is readily visible near the base of the antenna structure. At the time of each inspection, the ASR number was not posted at the site. Based upon the evidence before us, we find that VoiceStream willfully and repeatedly violated section 17.4(g) by failing to post the ASR number near the base of the antenna structure.

6. The *Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement")⁶ does not establish a base forfeiture amount for failure to post the ASR number.⁷ The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is two thousand dollars (\$2,000) per violation.⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2), 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

⁷ The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ...[forfeiture guidelines]... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case by case basis, under its general authority contained in Section 503 of the Act. *Id.*

⁸ See *American Tower Corporation*, 17 FCC Rcd 1282 (2001).

the Act,⁹ which include the nature, circumstances, extent, and gravity of the violation(s), and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Review of the Commission's records indicates that several Notices of Violations have been issued to VoiceStream or its affiliates within the past 2 years for failure to post the ASR at other registered antenna structures. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, we conclude a \$2,000 forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹⁰ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹¹ VoiceStream PCS I License, L.L.C., is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for violation of Section 17.4(g) of the Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,¹² within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, VoiceStream SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

10. The response, if any, must be mailed to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁹ 47 U.S.C. § 503 (b)(2)(D).

¹⁰ 47 U.S.C. § 503 (b).

¹¹ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

¹² 47 C.F.R. § 1.80.

12. Requests for payment of the full amount of this Notice of Apparently Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No.107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact the OCBO at (202) 418-0290.

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent Certified Mail #7001 0320 00029702 9615, Return Receipt Requested, to VoiceStream PCS I License, L.L.C., 12920 SE 38th Street, Bellevue, WA 98006.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

Enclosure: Attachment A

¹³ See 47 C.F.R. § 1.1914.